

Chapter 18
Conflict of
Interest — Who Me?

The following is being provided for information purposes only. In part, it is the opinion of the Audit Office, i.e., it is not based upon legal counsel. Therefore, the reader should come to their own conclusions.

In rare cases, auditors do observe situations which approach a conflict of interest between the consultant community and WSDOT.

The reader needs to be aware of this potential for conflict of interest and the implications which may result from such activity.

Basic Definition

Webster's New World Dictionary, Second College edition, defines conflict of interest as "a conflict between one's obligation to the public good and one's self-interest, as in the case of a public officeholder who owns stock in a company seeking government contracts."

48 CFR 3.101-1 discusses standards of conduct. "Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of conflict of interest in Government-contractor relationships." Part 3.101-2 states "As a rule, no Government employee may solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who (a) has or is seeking to obtain Government business with the employee's agency, (b) conducts activities that are regulated by the employee's agency, or (c) has interests that may be substantially affected by the performance or nonperformance of the employee's official duties."

In 1994, the Washington State Legislature passed a new state ethics law that applies to all state employees and officers.

The basic guiding principle is that a state officer or employee may not use his or her public position for private benefit or gain. This basic guiding principle is reflected in the following summary of four general provisions of the ethics law.

1. A state officer or employee may not have a financial or other interest, or engage in any business or professional activity that is in conflict with his or her official duties. ESSB 6111, Paragraph 102.
2. A state officer or employee may not use his or her official position to secure special privileges for himself or herself or any other person. ESSB 6111, Paragraph 107.

3. A state officer or employee may not receive any compensation or gift from a source, except the state, for performing or deferring the performance of any official duty. There is no minimum value for a gift. ESSB 6111, Paragraph 111.
4. A state officer or employee may not receive a gift or favor, if it could be reasonably expected to influence or reward his or her vote, judgment, action, or inaction. There is no minimum value for a gift. ESSB 6111, Paragraph 114.

Arm's Length Transactions

Consultants need to be aware of WSDOT policies that may restrict the eligibility of former WSDOT employees, hired by the consultant, from working in an official capacity and dealing with the department. The Audit Office recommends that if the consultants have any concerns regarding this area, they should contact the WSDOT Audit Office located in the WSDOT Olympia Service Center building in Olympia.

Be aware of the following:

Private firms should not attempt to entertain WSDOT employees. This includes buying their lunches and/or dinners. Likewise, WSDOT employees should not accept any form of gratuity including paid lunches and/or dinners from any private firm doing business with or having a potential of doing business with WSDOT. WSDOT does not consider paying a consultant with federal and state tax dollars to entertain WSDOT employees to be a legitimate business expense.

These types of costs should not be included in the overhead calculations, and they should never be billed as direct nonsalary costs to a WSDOT agreement. The bottom line is that if there is any question as to whether or not something is a conflict of interest, do not do it!

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